

**TEXT OF PROPOSED AMENDMENTS TO REGULATIONS
OF INDUSTRIAL MEDICAL COUNCIL
CALIFORNIA CODE OF REGULATIONS
TITLE 8, CHAPTER 1**

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ARTICLE 1 General

Section 1. Definitions. As used in these regulations:

(a) **"Accreditation"** means the conferring of recognized status as a provider of physician education by the Industrial Medical Council.

(b) **"Administrative Director"** means the administrative director of the Division of Workers' Compensation of the State of California Department of Industrial Relations.

(c) **"AME"** means Agreed Medical Examiner or Agreed Medical Evaluator, a physician selected by agreement between the employer and the employees to resolve disputed medical issues referred by the parties in a workers' compensation proceeding. It includes "agreed medical evaluator" as that term is used in Division 4 of the Labor Code.

(d) **"Appeals Board"** means the Workers' Compensation Appeals Board within the State of California Department of Industrial Relations.

(e) **"Audit"** means a formal evaluation of a continuing education program, disability evaluation report writing course, or an accredited provider which is conducted at the request of the Medical Director.

(f) **"Comprehensive Medical-Legal Evaluation"** means a medical evaluation ~~performed pursuant to Labor Code Sections 4060, 4061, or 4062 and meeting the requirements of defined in~~ Section 9793(c) of this Title.

(g) **"Claims Administrator"** means a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a group self-insurer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, group self-insurer, or joint powers authority.

(h) **"Continuing Education Program"** means a systematic learning experience (such as a ~~course~~, seminar, or audiovisual or computer learning program) which serves to develop, maintain, or increase the knowledge, skills and professional performance of physicians who serve as Qualified Medical Evaluators in the California workers' compensation system.

(i) **"Council"** means the Industrial Medical Council as defined in Labor Code Section 139.

(~~k~~ j) **"Credit Hour"** means a sixty-minute hour. A credit hour may include time for questions and answers related to the presentation.

(~~l~~ k) **"Direct medical treatment"** is that special phase of the ~~health care provider~~ physician-patient relationship during which - (~~1~~) the physician attempts to clinically diagnose and to alter or modify the expression of an ~~non-industrial~~ illness, injury or pathological condition; ~~or (2) attempts to cure or relieve the effects of an industrial injury.~~

(~~m~~ l) **"Distance Learning"** means an education program in which the instructor and student are in different locations, as in programs based on audio or video tapes, computer programs, or printed educational material.

(h m) “**DEU**” is the Disability Evaluation Unit under the Administrative Director responsible for issuing summary disability ratings.

(f n) “**Education Provider**” means the individual or organization which has been accredited by the Council to offer physician education programs. There are two categories of providers that may grant credit for continuing education programs and give courses in disability evaluation report writing: (1) the Council and (2) individuals, partnerships, or corporations; hospitals; clinics or other patient care facilities; educational institutions; medical or health-related organizations whose membership includes L.C. 3209.3 physicians; organizations of non-medical participants in the California workers' compensation system; and governmental agencies. In the case of a national organization seeking accreditation, the California Chapter or organization affiliated with the national organization shall be accredited by the Council in lieu of the national organization.

(p o) “**Evaluator**” means “Qualified Medical Evaluator,” or “Agreed Medical Evaluator,” or AME.

(q p) “**Medical Director**” means the Executive Medical Director appointed by the Industrial Medical Council pursuant to Labor Code Section 122, who is Executive Secretary of the Council.

(s q) “**Qualified Injured Worker**” means an employee defined pursuant to subdivision (c) of Section 10003 of this Title.

(r) “**QME**” means Qualified Medical Evaluator.

(t s) “**Qualified Medical Evaluator**” (~~QME~~) means a physician licensed by the appropriate licensing body for the state of California and appointed by the Council pursuant to Labor Code Section 139.2, ~~provided however, that acupuncturist QMEs shall not perform comprehensive medical-legal evaluations to determine disability.~~

(u t) (1) “**QME competency examination**” means an examination administered by the Industrial Medical Council for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. This examination shall be given at least as often as twice annually.

(2) “**QME competency examination for acupuncturists**” means an examination administered by the Industrial Medical Council for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system which are not pertinent to the determination of disability, but should be understood by acupuncturist QME's. This examination shall be given at least as often as twice annually.

(v u) “**Physician's office**” means a bona fide office facility which is identified by a street address and any other more specific designation such as a suite or room number and which contains the usual and customary equipment for the evaluation and treatment appropriate to the physician's medical specialty or practice.

(w v) “**Rebuttal examination**” means a comprehensive medical-legal evaluation performed at the request of a party concerning a disputed medical finding or conclusion by a QME concerning an unrepresented employee. It is only available for injuries occurring between January 1, 1991 and December 31, 1993.

(j w) **"Report Writing Course"** means the 12 hours of instruction in disability evaluation report writing which ~~is required~~ Labor Code Section 139.2 requires of a Qualified Medical Evaluator prior to appointment. A course must be approved by the Council.

(x) **"Significant Financial Interest or Affiliation"** means grant or research support; status as a consultant, member of a speakers' bureau, or major stock shareholder; or other financial or material interest for the program faculty member or his or her family.

(y) **"Treating physician"** means a physician who has provided direct medical treatment to an employee which is reasonably required to cure or relieve the effects of an industrial injury pursuant to section 4600 of the Labor Code.

(z) **"Treatment Guideline"** means ~~the an~~ an advisory guideline issued by the Industrial Medical Council ~~which sets out a systematic statement~~ intended to assist health care providers in the California workers' compensation community in making decisions about appropriate medical treatment for specific industrial injuries.

(ø aa) **"Uninsured Employer"** means an uninsured employer and the Uninsured Employers Fund pursuant to Labor Code Section 3716. The ~~UEF~~ Uninsured Employers Fund shall only be subject to these regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the ~~UEF~~ Uninsured Employers Fund by joinder as a party.

(aa bb) **"Unrepresented employee"** means an employee not represented by an attorney.

Authority cited: Labor Code sections 139, 139.2, 4060, 4061 and 4062.

Reference: Labor Code sections 139, 139.2, 4060, 4061, 4061.5 and 4062.

ARTICLE 2

QME Eligibility

Section 10. Appointment of QMEs

Application for appointment as a QME shall be submitted on the form in section 100. The completed application form and any supporting documentation as required by the application, shall be filed at the Council's headquarters office. Upon its approval of each application form and supporting documentation, the Council shall certify as eligible to sit for the QME competency examination those applicants who meet all of the statutory and regulatory eligibility requirements. Any application for appointment may be rejected if it is incompletely filled out, contains false information or does not contain the required supporting documentation listed in Section 11. Subject to section 63 of these regulations, a physician who is serving a period of probation imposed by the physician's licensing board or who has been convicted of a felony or misdemeanor may be denied appointment as a QME. No physician whose license is suspended shall be certified as a QME. Physicians shall be of good moral character to be appointed. Physicians whose appointment has been revoked in the past shall demonstrate their rehabilitation as a prerequisite to appointment. Physicians who, while under accusation or investigation for violations, either did not renew their appointment or resigned their appointment, shall be subject to continuation of any previously started investigation or filed accusation, and shall not be appointed if the basis for the investigation or accusation is true, unless besides meeting all other tests for appointment, they shall also demonstrate their rehabilitation as a prerequisite to appointment.

Authority cited: Sections 139, 139.2, 139.2(j)(6) Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, Labor Code.

Section 11. Eligibility Requirements for Initial Appointment as a QMEs.

The Council shall appoint as QMEs all applicants who meet the requirements set forth in Labor Code Section 139.2(b). ~~and all~~ All applicants:

(a) Shall submit the required supporting documentation:

(1) Copy of current license to practice in California;

(2) For Medical Doctors, or Doctors of Osteopathy:

(A) A copy of the applicant's certificate of completion of postgraduate specialty training at an institution recognized by the Accreditation Council for Graduate Medical Education or the ~~osteopathic equivalent~~ Osteopathic Postgraduate Training Institute, as defined pursuant to Section 12, or;

(B) A copy of the applicant's Board certification by a specialty board recognized by the Council or as defined pursuant to Section 12, or;

(C) A declaration under penalty of perjury accompanied by supporting documentation that the physician has qualifications that the Council and the Medical Board of California or the Osteopathic Medical Board of California both deem to be equivalent to board certification in a specialty.

(3) If a psychologist, (i) a copy of a doctoral degree in psychology or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, and has not had less than five years postdoctoral experience in the treatment of emotional and mental disorders or (ii) served as an AME on eight or more occasions prior to January 1, 1990 and has not less than five years postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(4) For Doctors of Chiropractic, the physician shall provide (1) a copy of a ~~current or otherwise~~ valid certificate in California Workers' Compensation Evaluation by either a California professional chiropractic association or an accredited California college recognized by the Council (*i.e.* Workers' Compensation Evaluation Certificate with a minimum 44 hours completed) or; (2) a certificate of completion of a chiropractic postgraduate specialty program of at least 300 hours taught by a school or college recognized by the Council, the Board of Chiropractic Examiners and the Council on Chiropractic Education.

(5) Or, for other physicians, a copy of the physician's professional diploma.

(b) Shall. ~~Prior~~ prior to appointment as a QME, ~~each applicant shall~~ complete a course of at least 12 hours in disability evaluation report writing pursuant to Section 11.5 of this Article. Doctors of Chiropractic who submit documentation showing compliance with section 11(a)(4) are exempt from this requirement.

(c) (1) Shall provide supplemental information and/or documentation to the Council after an application form is submitted if requested to verify an applicant's eligibility for appointment.

(2) Shall declare that ~~he or she~~ the applicant has not performed a QME Evaluation without QME Certification. The Council, after hearing pursuant to Section 61 may deny appointment to any applicant who has performed a QME Evaluation without QME Certification prior to appointment.

(d) Shall agree that during a QME exam the applicant ~~he or she~~ will not treat or offer or solicit to provide medical treatment for that injury for which he or she has done a QME evaluation for an ~~injured worker~~ employee unless a medical emergency arises as defined under subdivision (a) or (b) of Section 1317.1 of the Health and Safety Code. A QME may also provide treatment if requested by the employee pursuant to section 4600 of the Labor Code, but he or she shall not offer or solicit to provide it. A QME who solicits an injured employee to receive direct medical treatment or to become the primary treating physician of that employee shall be subject to disciplinary action pursuant to Section 60.

(e) Shall declare under penalty of perjury on the QME application ~~he or she~~ that the applicant:

(1) has an unrestricted license ~~or~~ and is not currently on probation from the state licensing board ~~and~~; , or, if the applicant has a restricted license or is currently on probation, state all the restrictions on the license and all terms of probation; and

(2) devotes at least one-third of ~~their~~ total practice time to providing direct medical treatment during each year of the applicant's term of appointment. This requirement shall not apply if the applicant has served as an AME on 8 or more occasions in the year prior to application and in each year of the applicant's term; or if the applicant meets the requirements of section 15.

(f) Shall pass the QME Competency Examination, or, if an acupuncturist, shall pass the QME Competency Examination for acupuncturists.

(1) In order to take this examination, a physician who is not currently appointed as a QME and not exempt pursuant to Labor Code §139(b)(1), shall be considered to have applied to take the QME competency examination upon submitting the properly-completed Application for Appointment Form in Section 100, and the Registration Form for the QME Competency Examination in Section 102 and the appropriate fee as specified in Section 11(f)(2).

(2) The fee for applying to take or retake the QME competency examination is \$125.00 and may be waived by the Council at its discretion for first time applicants.

~~(7~~ 3) An applicant who passes the QME competency examination shall file the QME Fee Assessment Form in Section 103 including the appropriate fee within 30 days of the date of the notice. The physician shall not be appointed to the official QME list until the appropriate fee is paid and has completed a disability evaluation report writing course pursuant to Section 11.5. Appointments shall be for two-year terms beginning with the date of appointment by the Council.

~~(8~~ 4) Any applicant, who upon good cause shown by the test administrator, is suspected of cheating may be disqualified from the examination and, upon a finding that the applicant did cheat in that exam, said person will be denied further examination for a period of at least two years thereafter. Any applicant who fails to follow test instructions and/or proctor instructions either before or during

or at the conclusion of an examination shall be disqualified from the examination procedure and the applicant's exam shall be nullified.

(9 5) If an applicant fails the competency examination or fails to appear for a noticed QME examination for which the applicant has submitted a QME Exam Registration Form 102, the applicant may apply to take any subsequent examinations, upon submission of a new test application form and a fee of \$125. An applicant who fails the exam three times shall show proof of having completed six (6) hours continuing education from a course approved by the Council prior to taking the examination again.

(10 6) Any applicant who receives a failing grade on a competency exam may appeal the failing grade to the Council. Appeals shall be considered on a case by case basis. Appeals will be accepted immediately after a candidate has completed the examination and until 10 days after the date of the examination results letter. The appeal shall state specific facts as to why the failing grade should be overturned. Pursuant to Section ~~6254(g)~~ 11126 (c) (1) of the Government Code, the Council will consider appeals of test questions in closed session with counsel and will base its decision solely on the written appeal including any supporting documentation submitted by the physician. Appeals will only be accepted for the current examination period. Grounds for appeal are:

(A) Significant procedural error in the examination process;

(B) Unfair Discrimination;

(C) Bias or fraud.

(g) Each applicant shall pay the annual fee required by section 17 of this Article prior to appointment.

Authority cited: Section 139.2, Labor Code.

Reference: Section 139.2, Labor Code. Section 6254, Government Code

Section 11.5. Disability Evaluation Report Writing Course

Prior to appointment as a QME, a physician shall complete a course of at least twelve hours of instruction in disability evaluation report writing. The report writing course curriculum shall be specified by the Council. Only report writing courses which are offered by education providers, as defined in this title, shall qualify.

(a) ~~To apply to the Council for accreditation, a provider shall~~ An education provider applicant shall submit:

(1) A completed IMC Form 118 which contains

(A) The applicant's name; address; director of education with contact information; type of organization; length of time in business; nature of business; and past experience providing continuing education courses (including a list of other accrediting agencies that have approved such courses);

(B) A description of the proposed education program or course which includes the title; type (continuing education program or disability evaluation report writing course); location(s); date(s); length of training in clock hours; educational objectives; a complete description of the program or course content; faculty; and the names of other accrediting agencies that have approved the program.

(2) A curriculum vitae for each proposed instructor. A proposed instructor shall have education and/or training and recent work experience relevant to the subject of his/her presentation

~~(3 b) To apply to the Council for accreditation, an applicant~~ An education provider applicant shall submit ~~to the Council, its application~~ at least 60 calendar days before any public advertisement of the ~~applicant's~~ course.

~~(b c)~~ The Council shall accredit a applicant that meets the definition of education provider ~~in Section 11.5(c);~~ submits a completed, signed and dated application which demonstrates past experience in providing continuing education programs; and proposes a program which meets the requirements of 55(c) or a course which meets the requirements of 11.5(a) and (i). The applicant must demonstrate that adequate time is allocated to the curriculum set forth in section 11(5)(i) for the course to be approved by the Council. Proposed content for continuing education program credit must relate directly to disability evaluation or California workers' compensation-related medical dispute evaluation. No credit shall be recognized by the IMC for material primarily discussing the business aspects of workers' compensation medical practice, including but not limited too billing, coding and marketing.

~~(e d)~~ The Council shall notify the applicant within 20 calendar days following the next scheduled Council meeting after receipt of the application containing all the information listed in Section 11.5 (a) whether that provider has been accredited for a two year period and the proposed course has been approved. Incomplete applications will be returned to the provider.

~~(d e)~~ A provider that has been accredited by the Council will be given a number which must be displayed on course promotional material.

~~(e f)~~ On or before the date the course is first presented, the provider shall submit the program syllabus (all program handouts) to the Council.

~~(f g)~~ An approved course may be offered for two (2) years. A provider shall notify the Council in writing of any change to the faculty in an approved course.

~~(g h)~~ To apply for re-accreditation, a provider must submit a completed IMC Form 118, using the application process in 11.5(a). The provider may complete section 2 of the form using a new program or course or one which was given by the provider during the recent accreditation period. The Council shall give the provider 90 days' notice of the need to seek re-accreditation.

~~(h i)~~ Promotional materials for a course must state the provider's educational objectives; the professional qualifications of course faculty (at the least, all relevant professional degrees); the content of course activities; and the intended audience.

~~(i j)~~ The minimum of 12 hours of instruction in disability evaluation report writing shall include:

(1) The Qualified Medical Evaluator's Role in the Disability Evaluation Process (minimum recommended 1 hour)

How disability evaluation reports are used.

The reasons why reports must be clear, complete and timely.

The QME's role as an expert witness.

Impact of the QME's report on the ~~injured worker~~ employee.

QME ethics and the Confidentiality of Medical Information Act.

(2) Elements of the Medical-Legal Report (minimum recommended 1 hour)

The Labor Code and regulatory requirements for medical-legal reports.

(3) The Language of Reports (minimum recommended 4 hours)

Evaluation of disability in California (impairment and disability)

The occupational history

The physical examination and the role of testing

Labor Code requirement to use Packard Thurber's Evaluation of Industrial Disability

Factors of disability

Subjective

Objective

Work restrictions

Loss of pre-injury capacity

Causation

Determination of permanent and stationary status

Vocational rehabilitation

Apportionment

Future medical treatment

Review of records

Providing sufficient support for conclusions

(4) The Council's Disability Evaluation Protocols (minimum recommended 1 hour)

An overview of the protocols and an in-depth discussion of one or more of the Neuromusculoskeletal, Pulmonary, Cardiac, Immunologic, or Psychiatric protocols.

(5) The Third Party Perspective (minimum recommended 1 hour)

The report from the perspective of those who read it:

Judge(s), attorney(ies), insurer(s), rater(s), employer(s), qualified rehabilitation representative(s).

(6) Anatomy of a Good Report (small group or other interactive sessions - minimum recommended 3 hours)

Discussion of examples of good reports and identification of weaknesses in reports

Opportunities for the practitioner to critique and/or correct reports.

If feasible, physician should have the opportunity to write a sample report.

Review of results of IMC annual report review and identification of common problems with reports.

(7) Mechanics of Report Writing (minimum recommended 1 hour)

The QME Process

Face to face time
Timelines for submission of report
Completion of required forms
Service of reports
Final questions and answers

(j ~~k~~) No more than four hours of the required twelve hours of instruction may be taken by distance learning. All audio or video tapes, computer programs and printed educational material used in the course must be submitted to the Council on or before the date the course is first given. All distance learning materials shall bear a date of release and shall be updated yearly. The provider shall notify the Council in writing of the revision.

(~~k~~ ~~l~~) No one shall recruit members or promote commercial products or services in the instruction room immediately before, during, or immediately after the presentation of a course. Providers or vendors may display/sell educational materials related to workers' compensation or applications for membership in an area adjoining a course. A course provider or faculty member shall disclose on IMC form 119 any significant financial interest in or affiliation with any commercial product or service which discussed in a course and that interest or affiliation must be disclosed to all attendees.

(l ~~m~~) The provider shall maintain attendance records for each disability evaluation report writing course for a period of no less than three years after the course is given. A physician attending the course must be identified by signature. The provider must submit a copy of the signature list to the Council within 60 days of completion of the course.

(~~m~~ ~~n~~) The provider is required to give the IMC's Evaluation (Form 117) to course attendees and request they submit the form to the IMC. This information shall not be used in lieu of a certification of completion given by the provider, as specified pursuant to section (n). Destruction by a provider or its employee of a QME's Evaluation Form or failure by such provider or its employee to distribute Form 117 as part of its course shall constitute grounds for revocation of a provider's accredited status. The Council shall tabulate the responses and return a summary to the provider within 90 days of completion of the course.

(~~n~~ ~~o~~) The provider shall issue a certificate of completion to the physician which states the name of the provider, the provider's number, the date(s) and location and title of the course. To be eligible for appointment as a QME, a physician must complete no less than 12 hours of the curriculum specified in Section 11.5 (i) and must submit a copy of that certificate to the Council.

(~~o~~ ~~p~~) Joint sponsorship of courses (as between an accredited and an unaccredited provider) must be approved by the Council prior to presentation of the course.

(~~p~~ ~~q~~) The Council may audit a provider's course(s) at the request of the medical director to determine if the provider meets the criteria for accreditation. The Council may audit courses given by providers randomly, when a complaint is received, or on the basis of responses on IMC Form 117. An auditor shall not receive QME credit for auditing a course. The Council shall make written results of the audit available to the provider no more than 30 days after the audit is completed.

(~~q~~ ~~r~~) Accredited providers that cease to offer disability evaluation report writing courses shall notify the Council in writing no later than 60 days prior to the discontinuing an approved course.

(f) The Council may withdraw accreditation of a provider or deny such a provider's application for accreditation on the following grounds (in addition to failure to meet the relevant requirements of subsections 11.5 (a) or 55(c):

- (1) Conviction of a felony or any offense substantially related to the activities of the provider.
- (2) Material misrepresentation of fact by the provider.
- (3) Failure to comply with Council regulations.
- (4) False or misleading advertising.
- (5) Failure to comply with Council recommendations following an audit.
- (6) Failure to distribute Council form 117 cards to course attendees.

Authority cited: Labor Code sections 139, 139.2, 4060, 4061 and 4062.

Reference: Labor Code sections 139, 139.2, 4060, 4061, 4061.5 and 4062.

Section 14. Doctors of Chiropractic: Certification in Workers' Compensation Evaluation.

(a) All doctors of chiropractic, in lieu of board certification, shall be certified in workers' compensation evaluation by either a California professional chiropractic association, or an accredited California college recognized by the Council. The Council shall approve courses for a period of two years. The Council shall not recognize any certificate issued to the physician before the doctor of chiropractic is licensed to practice in the State of California. The certification program shall include instruction on disability evaluation report writing that meets the standards set forth in Section 11.5.

(b) California professional chiropractic associations, or accredited California colleges applying to be recognized by the Council for the purpose of providing these required courses to chiropractors in California workers' compensation evaluation, shall meet the following criteria:

(1) The provider's courses shall be administered and taught by a California professional chiropractic association or a California chiropractic college accredited by the Council on Chiropractic Education. Instructors shall be licensed or certified in their profession or if a member of a non-regulated profession have at least two years experience in their area of instruction regarding workers' compensation issues.

(2) The provider's method of instruction and testing shall include all of the following:

(A) lecture, didactic sessions and group discussion including an initial 8 hours of overview of the workers' compensation system and 36 additional hours in medical-legal issues for total minimum class time of 44 hours. Up to 4 hours of the instruction covering the regulations affecting QMEs and/or writing ratable reports may be satisfied by distance learning. The initial 8 hours of overview are transferable to any other approved program provider for credit;

(B) passing a written test at the completion of the program to determine proficiency and application of course material;

(C) writing a narrative conclusion to medical-legal issues in response to facts presented or a narrative report, in appropriate format, which would meet the standards of a ratable report;

(3) The initial 8 hours of the course material shall cover the following information:

(A) overview of California Labor Code, DWC (Division of Workers' Compensation of the California Department of Industrial Relations) and Council regulations governing medical-legal reports and evaluations;

(B) obligations of the treating and evaluating physicians;

(C) review of appropriate workers' compensation terminology;

(4) The remaining 36 hours shall include but not be limited to the following:

(A) history and examination procedure requirements, including all relevant IMC guidelines;

(B) work capacity guidelines and disability ratings;

(C) apportionment;

(D) vocational rehabilitation;

(E) continued or future medical care.

(5) The provider's course material and tests shall be submitted to the Council for annual review and the Council shall monitor a provider's course as necessary to determine if the provider meets the criteria for recognition.

(6) The provider's course advertising shall clearly state whether or not the course is recognized to satisfy the requirement for chiropractic California workers' compensation evaluation by the Council.

(c) Course Material shall also cover at a minimum, the material within the text of the "Physicians Guide to Medical Practice in the California Workers' Compensation System (Current Edition).

NOTE: The "Physicians Guide" does not appear as a part of this regulation. Copies are available through the Executive Medical Director of the Industrial Medical Council; P. O. Box 8888, San Francisco, CA 94128-8888.

Authority cited: Sections 139, 139.2 and 139.3, Labor Code.

Reference: Sections 139.2, 4060, 4061 and 4062, Labor Code.

Section 15. Appointment of Retired, or Teaching, or Disabled Physicians.

In order to be considered for appointment as a QME pursuant to Labor Code Section 139.2(c), a physician shall pass the QME competency examination and submit written documentation to the Council that ~~he or she~~ the physician meets the requirements of either (a), ~~or~~ (b) ~~or (c)~~ of this section. ~~A physician applying for appointment pursuant to this section shall also pass the QME competency examination.~~

The physician shall:

(a) Be a current salaried faculty member at an accredited university or college, have a current license to practice as a physician and ~~have been~~ be engaged in teaching, lecturing, published writing or medical research at that university or college in the area of his or her specialty for not less than one-third of his or her professional time. The physician shall have a minimum of 10 years experience in workers' compensation medical treatment. The physician's practice ~~in the three consecutive years immediately preceding the time of application~~ shall not ~~have been~~ be devoted solely to the forensic evaluation of disability.

(b) ~~Be retired from full time practice,~~ The physician shall retaining a current license to practice as a physician ~~with his or her licensing board;~~ and

(1) Has ~~a minimum of 25 years' experience in his or her practice as a physician;~~ and

(2) Has a minimum of 10 years' experience in workers' compensation medical ~~issues~~ treatment; and

(3) Is currently practicing no more than fewer than 10 15 hours per week ~~on direct medical treatment~~ as a physician, and;

(4) ~~Whose practice~~ Have a practice ~~in the three consecutive years immediately preceding the time of application~~ was that is not devoted solely to the forensic evaluation of disability

(c) ~~Be retired from active practice due to a documented medical or physical disability as defined pursuant to Gov't Government Code §12926 and currently practicing in his or her their specialty fewer than 10 hours per week. The physician shall have 10 years experience in workers' compensation medical issues as a physician. The physician's practice in the three consecutive years immediately preceding the time of application shall not have been devoted solely to the forensic evaluation of disability.~~

(d c) A physician appointed under Section 11 or this section shall, notify the Council of any changes in his or her status within 30 days and shall complete the requirements for continuing education pursuant to section 55 prior to reappointment.

Authority cited: Sections 139, 139.2, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, Labor Code.

Section 17. Fee Schedule for QME.

(a) All physicians seeking QME status shall be required to pay to the Industrial Medicine Fund within the Industrial Medical Council, the following fees:

(1) QMEs performing 0 - 10 comprehensive medical-legal evaluations, \$110 during each of the years ~~of~~ or any part of a year the physician retains his or her eligibility on the approved QME list.

(2) QMEs performing 11 - 24 comprehensive medical-legal evaluations, \$125 during each of the years ~~of~~ or any part of a year the physician retains his or her eligibility on the approved QME list.

(3) QMEs performing 25 or more comprehensive medical-legal evaluations, \$250 during each of the years ~~of~~ or any part of a year the physician retains his or her eligibility on the approved QME list

(b) Individual QMEs who perform comprehensive medical-legal evaluations at more than one medical office location within the state which is identified by a street address and any other more specific

designation such as a suite or room number and which contains the usual and customary equipment for the evaluations and treatment appropriate to the medical specialty or practice shall be required to pay an additional \$100 annually per additional office location. This requirement applies to all QMEs regardless of whether the QME is a sole practitioner, or corporation, or partnership pursuant to Corporations Code Chapter 1 (sections 15001-15045) Chapter 2 (sections 15501-15533) and/or Chapter 3 (sections 15611-15723).

Authority cited: Section 139.2, Labor Code.
Reference: Sections 139 and 139.2, Labor Code.

Section 18. QME Fee Due Dates.

(a) All physicians, ~~regardless of the number of comprehensive medical legal evaluations performed under Section 17~~ shall pay the required QME fees at yearly intervals within 30 days of receipt of notice from the Council that the QME fee for the next 12 months is due and payable. No physician who has passed the QME competency examination shall be placed on the active QME roster until the appropriate fee under section ~~15~~ 17 has been paid.

(b) Any QME who fails to pay the required statutory fee within 30 days of receipt of a final notice that the fee is due shall be notified that he or she shall be terminated from the official QME roster of physicians within 30 days and shall not perform any panel QME or represented QME comprehensive medical-legal evaluation until the fee is paid.

(c) If the fee is not paid within two years from the due date in the QMEs final notice from the Council that the fee is due, then the physician shall ~~resubmit~~ submit a new application pursuant to Sections 10 and 11, pass the QME competency examination, meet then current criteria for reappointment, retake the report writing class, and pay the appropriate fee prior to regaining QME eligibility.

Authority Cited: Section 139.2, Labor Code.
Reference: Sections 139 and 139.2, Labor Code.

Section 19. Certificate of QME Status.

(a) ~~Upon receipt of the QME fees and review by the Council to ensure current compliance with section 139.2 of Labor Code and any other applicable regulations promulgated by the Council concerning QME eligibility approval by the Council of the physician's qualifications, and within 45 days of receipt of the QME fees pursuant to Section 17, the Council shall within 45 days send to the physician a Certificate of Approved Status as Qualified Medical Evaluator. The QME certificate of QME status shall be displayed in a conspicuous manner at the QME's office location at all times during the period the QME physician is approved appointed by the Council to conduct evaluations under Council appointment as a QME.~~

(b) It shall be unlawful for any physician who is not appointed as a QME, has been or who has been either terminated or suspended from the QME list, or who has failed to pay the required QME fee pursuant to section 17, to display a certificate of Approved Status as Qualified Medical Evaluator.

Authority Cited: Section 139.2, Labor Code.
Reference: Sections 139 and 139.2, Labor Code.

ARTICLE 2.5

Time Periods for Processing Applications for QME Status

Section 20. Time Periods.

(a) Within 45 days of receipt of an application for QME status, the Council shall either inform the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required.

(b) Within 45 days of receipt of a completed application, the Council shall inform the applicant, in writing, of its decision to allow or not to allow the applicant to proceed to take the required QME competency examination as per Section 11(c) of these regulations.

(c) Within 45 days of receipt of a completed application, the Council must inform the applicant, in writing, of its decision to grant or deny the application.

(d) Based upon the two years immediately preceding October 1, 1993, the Council's minimum time for processing an application for QME status is 14 days. The median time is 60 days. The maximum time is 2 years.

(e) Should the Executive Medical Director determine within any of the 45 day periods of subsections (a), (b), or (c) of this section, that there is an issue of whether the applicant is not qualified for QME appointment under any provision of sections 10 or 11, the Council shall inform the applicant in writing that such an issue exists. Upon notification, the application shall be deemed incomplete, and the Executive Medical Director may cause an investigation to be held on the applicant's qualifications.

Authority cited: Sections 139, 139.2, Labor Code; Section 15376, Government Code.

Reference: Sections 4060, 4061 and 4062, Labor Code.
Section 15376, Government Code.

Section 21. Examinations and Applications.

(a) The Medical Director shall give appropriate public notice of the date, time and location of the examination no fewer than 60 calendar days before a competency examination is to be given.

(b) An applicant must submit the properly completed forms as required in Section 11(f)(1) to the Medical Director at least 30 calendar days prior to the date of the next scheduled competency examination unless the Medical Director finds good cause to grant an extension to the physician(s).

(c) The Medical Director shall inform the applicant in writing whether he or she shall be allowed to take the examination within 15 calendar days from the date the Council receives the properly completed forms and appropriate fee.

(d) The Medical Director shall inform the applicant in writing whether or not he or she passed the examination within 60 calendar days from the date the applicant takes the competency examination.

ARTICLE 3 Assignment Of Qualified Medical Evaluators,

Evaluation Procedure

Section 30. QME Panel Requests.

(a) Requests for a QME panel made by an unrepresented employee pursuant to Labor Code Sections 4061 and 4062 shall be submitted on the form in Section 106. When the form in Section 106 is sent pursuant to Labor Code section 4061(d), the claims administrator or, if there is no claims administrator, the employer, shall complete sections one, two and three of the form in Section 106. The employee shall have the sole authority to complete section four of the form and send the completed form to the IMC. The claims administrator shall not select a QME specialty. The form shall require the employee to furnish his social security number.

(b) In the event a request form is incomplete, or improperly completed so that a QME panel selection cannot properly be made, the request form shall be returned to the party who failed to complete the form ~~employee~~ with an explanation, why the selection could not be made. The IMC will notify the party not receiving the form in Section 106 with an explanation why the IMC could not make a proper QME panel selection.

(c) The Request for Qualified Medical Evaluator Form along with the instruction form in Section 105 entitled "How to Request a Qualified Medical Evaluator" shall be provided by the claims administrator (or, if there is no claims administrator, the employer) to the unrepresented employee by personal delivery to the employee or by first class or certified mailing.

(d)(1) For admitted injuries between January 1, 1991 and December 31, 1993, a panel request form and notice in a form prescribed by the Administrative Director pursuant to Article 8 of Chapter 4.5 of this Title shall be provided to an unrepresented employee where the employee, the claims administrator or, if none, the employer alleges a medical conclusion that the employee is no longer entitled to temporary disability indemnity and permanent disability cannot be determined or is or is not payable. The QME shall address all medical issues raised by the parties, including but not limited to the employee's permanent and stationary status, the extent and scope of medical treatment, the employee's status as a Qualified Injured Worker or the existence of new and further disability in order to produce a complete comprehensive medical-legal evaluation.

(2) For admitted injuries occurring on or after January 1, 1994 a panel request form and the Administrative Director's notice pursuant to Article 8 of Chapter 4.5 of this Title shall be provided to an unrepresented employee where a party disputes a medical conclusion by the primary treating physician. If the issues are other than the level of permanent impairment and limitations or the need for medical care, the objecting party shall, absent good cause as determined by the Appeals Board, notify the other party of the nature of the objection within 30 days of receipt of the report from the primary treating physician. The objecting party shall submit a written copy of the objection to the QME along with any medical records submitted pursuant to the requirements of Section 35. After the QME evaluation is complete, either the employee or the employer may object to any new or unresolved issue. The parties shall utilize the same QME to the extent possible. Where the issue is outside the QME's scope of practice pursuant to the QMEs licensing authority, the parties may select another QME pursuant to subdivision (a) of Section 4064 of the Labor Code.

(e) If the request form is submitted by an unrepresented employee who no longer resides within the state of California, the geographic area of the QME panel selection within the state shall be determined by agreement between the claims administrator or, if none, the employer, and the employee. If no agreement

can be reached, the geographic area of the QME panel selection shall be determined by the employee's former residence within the state.

(f) If the request form is submitted by an unrepresented employee who never resided within the state of California, the geographic area of the QME panel selection within the state shall be determined by agreement between the claims administrator or, if none, the employer, and the employee. If no agreement can be reached, the geographic area of the QME panel selection shall be determined by the place of business of the employer where the employee was principally employed.

Authority cited: Sections 139, 139.2, 4061 and 4062, Labor Code.

Reference: Sections 139.2, 4061 and 4062, Labor Code.

Section 31. QME Panel Selection.

(a) The panels shall be selected randomly from the ~~appropriate~~ specialty requested by the employee, with consideration given to the proximity of the QME's medical office to the employee's residence. The panel form shall contain information on the QME's education, training, years of practice and, if applicable, probationary status. A panel containing the name of a QME currently on probation, as defined in Section 62 of these regulations, shall have their probation noted on the panel by a footnote. The panel form shall direct employees to contact the Council for further information about the nature of the QME's probation.

(b) The unrepresented employee shall make an appointment request with a QME listed on the panel and may consult with his or her primary treating physician as to an appropriate QME specialist. Neither the claims representative nor a representative of the employer nor a QME may discuss or make the selection of a panel QME for an unrepresented ~~worker~~ employee at any time.

(c) The Medical Director shall exclude from the panel selection process any QME who ~~has informed the Medical Director that he or she is unavailable pursuant to Section 33.~~

(d) Any physician who has served as a primary treating physician or secondary physician ~~and who has provided treatment in accordance as defined in with~~ Section 9785 of this Title for this injury for an unrepresented employee shall not perform a QME evaluation on that employee. If that QME appears on a panel, he or she the physician shall be disqualified from the panel him or herself, and the employee may shall request a replacement QME pursuant to Section 31.5.

Authority cited: Sections 4061, 4062, Labor Code.

Reference: Sections 139.2, 4061, 4062, Labor Code.

Section 31.5. QME Replacement Requests.

(a) A replacement QME to a panel shall be provided to an unrepresented ~~worker~~ employee upon the employee's request if any of the following occurs:

(1) A QME on the panel issued does not practice in the specialty requested by the employee.

(2) A QME on the panel issued cannot schedule an examination for the employee within 60 days of the employee's request.

(3) The employee has changed ~~his or her~~ their residence address since the QME panel was issued.

~~(4) A physician on the QME panel is a member of the same group practice as defined by Labor Code section 139.3 as another QME on the panel.~~

~~(5)~~ (4) The QME is unavailable pursuant to section 33.

(5) The QME has failed to complete a report in violation of section 38.

(6) If a physician on the panel has been placed on probation by the QME's licensing board or the IMC.

(b) Any party may request a replacement QME if any of the following occurs:

(1) The employee's primary treating physician, secondary physician, or any physician who was previously designated by the primary treating physician to write a report in accordance with Section 9785 of this Title is on the panel.

(2) The claims administrator or, if none, the employer and the unrepresented employee agree that a new panel may be issued in the geographic area of the employee's work place.

(3) Upon a written showing of good cause, T the Medical Director, upon written request, finds good cause that may issue a replacement QME is appropriate for reasons related to the medical nature of the injury. For purposes of this subsection, "g Good cause" in this subsection is defined to include as a documented medical or psychological impairment.

~~(4) The Medical Director, upon written request, determines after a review of all appropriate records that the specialty chosen by the injured worker is medically or otherwise inappropriate for the injury to be evaluated.~~

~~(45)~~ Any violation of the QME's obligation to notify parties of the QME evaluation as required by in by Section 34.

(5) The QME is a member of the employee's immediate family as defined in Labor Code Section 139.3(b)(2), or the employee's supervisor, employer, or employee.

(6) A physician on the panel is a member of the same group practice as defined by Labor Code section 139.3, as the treating physician, unless there is good cause not to remove one or more of the physicians from the panel.

(7) There has been a finding of prohibited ex-parte contact in violation of section 35.

(c) The Medical Director shall select replacement QME(s) at random, unless the reason for the need for a replacement panel is the result of a documented medical or psychological impairment that requires the selection of a panel in a different manner.

Authority cited: Sections 139, 139.2, 4061 and 4062, Labor Code.

Reference: Sections 139.2, 4061 and 4062, Labor Code.

Section 32. Consultations.

(a) For injuries occurring between January 1, 1991 and December 31, 1993, a party may request the Medical Director to direct the QME to consult with a physician in an appropriate specialty to address issues outside the QME's specialty if the party believes such a consultation is necessary to provide a complete and accurate examination pursuant to section 4061 of the Labor Code. The party requesting the consultation shall specify in writing the reasons for the consultation. Valid reasons for providing the QME consultation shall include, but not be limited to, the expertise of the QME, the accuracy of the QME comprehensive medical-legal evaluation in question and the complexity of the medical issue involved.

(b) The Medical Director shall appoint a separate list of physicians for requests pursuant to subsection (a), and shall, in his or her discretion, grant or deny the request within 30 days.

(c) For injuries occurring on or after January 1, 1994, a QME may obtain a consultation from any physician who has treated the unrepresented employee for the injury listed on the panel request form or by any physician as reasonable and necessary pursuant Labor Code section 4064 or upon agreement by a party to pay the cost.

(d) In any case where an acupuncturist has been selected by the ~~injured worker~~ employee from a three-member panel and an issue of disability is in dispute, the acupuncturist shall request a consult from a QME defined under section 1(~~t~~ r) to evaluate the disability issue(s). The acupuncturist shall evaluate all other issues as required for a complete evaluation.

Authority cited: Sections 139.2, 4061, 4062, 4064, Labor Code.

Reference: Sections 4061, 4062, Labor Code.

Section 33. Unavailability of QME.

(a) A QME who will be unavailable to accept appointments to a QME panel for a period of ~~14~~ 45 days or more for any reason, including a change of address, absent good cause including but not limited to medical or family emergency, shall notify the Medical Director by submitting the form in Section 109. The form shall be filed with the Medical Director 30 days prior to the period of unavailability. The Medical Director may, in his or her discretion, grant a notice of unavailability within the 30-day period in cases of injury or illness to the QME or his or her immediate family.

(b) It shall not be an acceptable reason for unavailability that a QME does not intend to perform comprehensive medical-legal evaluations for unrepresented ~~worker~~ employees. A QME who has filed notifications for unavailability for more than 90 days during the QME fee period without good cause may be denied reappointment subject to Section 52. Good cause includes, but is not limited to sabbaticals or death of immediate family member.

(c) If an unrepresented employee is unable to obtain an appointment for an evaluation with a selected QME within 60 days after an appointment request, the employee may report the unavailability of the QME to the Medical Director. The Medical Director shall provide a replacement QME at random to be added to the employee's panel in accordance with Section 31(d). The employee may choose to waive his or her right to replacement QME and accept a later appointment with the originally selected QME or select one of the two remaining QME's on the panel.

(d) If a QME fails to notify the Medical Director, by submitting the form in Section 109, of his or her unavailability at a medical office due to a change in address for that office within 30 days of the change,

the Medical Director may designate the QME to be unavailable at that location for 30 days from the date the Medical Director learns of the change in address. At that time, a certified letter will be sent to the QME by the IMC regarding his/her unavailability. If the IMC does not receive a response within 30 days of the date of certification of the letter, then the QME will be made inactive at that location.

Authority cited: Sections 139, 139.2, Labor Code.
Reference: Sections 139.2, 4061, 4062, Labor Code.

Section 33.5 Inactive Status.

(a) Any physician, who wishes to retain his or her QME status, but not perform medical examinations that require a QME certificate, may apply for inactive status on a form promulgated by the Council. Any physician who is on inactive status shall pay the minimum renewal fee. The physician shall submit a completed application for QME appointment and meet all criteria for reappointment.

(b) To return to active status, the physician shall notify in writing the Executive Medical Director of the change to active status on a form provided by the Council. No change in status from inactive to active status shall be effective until the Executive Medical Director verifies that the physician has either completed the educational requirements under section 55 of these regulations for the physician's period of inactivity or has retaken and passed the QME competency examination.

(c) It shall be a cause for discipline under section 60 for any QME to perform a medical examination requiring a QME certificate while on inactive status.

(d) A physician called to active duty in the United States Military, may, upon discharge from active duty, resume QME status for the remainder of the QME term which was interrupted by active duty service.

Authority cited: Sections 139, 139.2, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, Labor Code.

Section 34. Appointment Notification.

(a) When an unrepresented employee makes an appointment with a QME, the QME shall complete an appointment notification form by submitting the form in Section 110. This completed form shall be postmarked or sent by facsimile to the employee and the claims administrator or, if none, the employer within 5 working days of the date the appointment was made. Failure to comply with this requirement shall constitute grounds for denial of reappointment under Section 51.

(b) The QME shall schedule an appointment for a comprehensive medical-legal examination which shall be conducted only at the medical office listed on the panel selection form unless for the convenience of the employee, another location is selected by mutual agreement of the employee and claims administrator.

(c) The QME shall include within the notification whether a Certified Interpreter, as defined by Labor Code Section 5811 and subject to the provisions of section 9795.3 of this Title, is required and specify the language. The interpreter shall be arranged by the party who is to pay the cost as provided for in Section 5811 of the Labor Code.

Authority cited: Sections 139, 139.2, Labor Code.

Reference: Sections 4061, 4062, Labor Code.

Section 35. Exchange of Information.

(a) Where an employee is unrepresented, the claims administrator or, if none, the employer shall, and the employee may, provide to the QME:

(1) A letter or other communication outlining the issues which the QME is requested to address in the evaluation. The letter shall be served on the opposing party no less than 20 days in advance of the evaluation;

~~(1)~~ (2) All records prepared or maintained by the employee's treating physician or physicians;

~~(2)~~ (3) Other medical records in their possession, including any previous treatment records; a job analysis agreed to by the parties, and the record of any previous awards or settlements in any workers' compensation proceeding.

~~(3) A letter outlining the issues which the QME is requested to address in the evaluation, which shall be served on the opposing party no less than 20 days in advance of the evaluation;~~

(4) Any other non-medical records or information which are relevant to the evaluation of the employee's injury;

(b) The information described in section 35(a) shall be served on all parties, except as otherwise provided in section (c) (d). In no fewer than 20 days before the information is to be provided to the QME, the party providing such information shall serve on the opposing party the following:

~~(1) A copy of all medical records and medical reports to be sent.~~

~~(2) A copy of all non-medical documents or other non-medical information, including films or videotapes, to be sent.~~

(3) (c) When the ~~The~~ claims administrator or employer serves the information described in section 35(a) on the employee, they shall include a cover letter or other document ~~when providing such information to the employee~~ which shall clearly and conspicuously include the following language: "Please look carefully at the enclosed information. The doctor who is evaluating your medical condition may use the information, because it may be used by the doctor who is evaluating your medical condition as it relates to your workers' compensation claim. If you do not want the doctor to see this information, you must let me know within 10 days of receipt of this letter."

~~(4)~~(d) An unrepresented employee may object to a QME reviewing any of the non-medical records, as defined in section 35(a)(4). An unrepresented employee shall inform the claims administrator, or employer, and the QME of the objection no later than 10 days before the scheduled date of the examination.

~~(3) Copies of all records being sent to the QME shall be sent to all parties except as otherwise provided in section (c) (d). Failure to do so shall constitute ex parte communication by the party transmitting the information under section (f).~~

~~(e)~~ (e) In the event that the unrepresented employee schedules an appointment within 20 days of receipt of the panel, the employer or if none, the claims administrator shall not be required to comply with the 20 day time frame for sending medical information in subsection ~~(b)(2)~~ (a) provided, however, that the unrepresented employee is served all non-medical information in subsection ~~(b)(2)~~ (a) 20 days prior to the information being served on the QME so the employee has an opportunity to object to any non-medical information, as defined in section 35(a)(4).

~~(d)~~ (f) In the event that a party fails to provide to the QME any relevant medical record which the QME deems necessary to perform a comprehensive medical-legal evaluation, the QME may contact the treating physicians or other health care provider, to obtain such record(s). If the party fails to provide relevant medical records under section (a) within 10 days after the date of the evaluation, and the QME is unable to obtain the records, the QME shall complete and serve the report to comply with the statutory time frames under Section 38. The QME shall note in the report that the records were not received within the required time period. Upon request by the party, or the Appeals Board, the QME shall complete a supplemental evaluation when the relevant medical records are received. For a supplemental report the QME need not conduct an additional physical examination of the employee if the QME believes, a review of the additional records is sufficient.

~~(e)~~ (g) The QME and the employee's treating physician(s) may consult as necessary to produce a complete and accurate report. The QME shall note within the report the issues discussed in the consultation and any new or additional information received from the treating physician.

~~(f)~~ (h) If an employer or claims administrator communicates with a QME in violation of Labor Code section 4062.2 or section 35, the Medical Director shall provide the unrepresented employee with a new panel in which to select a new QME or the employee may elect to proceed with the original QME. If an employee communicates with a QME either before or after the evaluation in violation of Labor Code section 4062.2 or section 35, the claims administrator or employer may request the Medical Director to issue a new panel to the unrepresented employee. The Appeals Board shall retain jurisdiction to determine whether ex parte contact has occurred in all cases. Pursuant to Section 60 of this title, the Medical Director may initiate an action against a QME for any violation of this section.

(i) It shall not be ex-parte contact for the employer or claims administrator to communicate with a QME or their staff solely about the provision of the records described in section 35(a).

Authority cited: Sections 139, 139.2, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.2, Labor Code.

Section 35.5. Compliance ~~by QMEs~~ with IMC Guidelines.

Any evaluation pursuant to Labor Code 4060, 4061 and 4062 to determine the existence and extent of permanent impairment and limitations resulting from an injury shall be performed in compliance with all appropriate evaluation procedures pursuant to Article 4 of this Chapter.

Authority cited: Sections 139, 139.2(j)(2), Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.2, Labor Code.

Section 36. Summary Form for Comprehensive Medical-Legal Evaluation Performed Pursuant to Labor Code Section 4061 by QMEs or AMEs; Service of Form and Evaluation.

(a) Upon completion of either a comprehensive medical-legal evaluation or follow-up medical legal evaluation as defined under Section 9793(f) of this Title, of an unrepresented employee, the evaluator shall complete the QME/AME Findings Summary Form in Section

111. The Form shall not be required for a supplemental medical legal evaluation under 9793(k) of this Title. The evaluator shall serve the comprehensive medical-legal evaluation, the summary form, and DEU forms 100 and 101 on the employee, and the claims administrator, or if none, the employer, as well as the appropriate local DEU office within the time frames specified in Section 38.

(b) If an evaluation is completed under subsection (a) for an unrepresented employee, in which the QME determines that the employee's condition has not become permanent and stationary as of the date of the evaluation, the parties shall request any further evaluation from the same QME if the QME is currently an active QME and available at the time of the request for the additional evaluation. If the QME is unavailable, a new panel may be issued to resolve any disputed issue(s). If the evaluator is no longer a QME, he/she may issue a supplemental report as long as a face-to-face evaluation (as defined in section 49(b) of these regulations) with the ~~injured worker~~ employee is not required. In no event shall a physician who is not a QME or no longer a QME perform a follow up evaluation on an ~~injured worker~~ employee.

Authority cited: Section 139, Labor Code.
Reference: Sections 4060, 4061, 4062, Labor Code.
8 CCR 10161

Section 38. Medical Evaluation Time Frames; Extensions for QME's and AME's.

(a) This Section shall apply to initial comprehensive medical-legal evaluations and supplemental evaluations.

~~(a) For a late report, regardless of the date of injury, if any of the following occur, the unrepresented injured worker shall be entitled to a new three member QME panel:~~

- ~~_____ (1) the QME fails to request an extension~~
- ~~_____ (2) the timeframe extension is denied~~
- ~~_____ (3) the QME does not issue the report by the approved extension date.~~

~~The injured worker shall have 15 days from the date of notice by the Medical Director to complete, sign and return IMC Forms 113, 115, 116 as applicable. If the employee requests a new panel, the claims administrator or, if none, the employer shall have no liability for the late report. If the employee is represented by an attorney and the extension is denied to an AME, either party may withdraw from the AME and no party shall be liable for payment to the AME.~~

(b) For injuries between January 1, 1991 and December 31, 1993, the time frame for initial comprehensive medical-legal evaluations to be prepared and submitted shall not exceed 45 days after the QME or AME has seen the employee or otherwise commenced the comprehensive medical-legal evaluation procedure. Extension of the 45-day limit shall be approved when the evaluator has good cause or has not received test results or consulting physicians' evaluations necessary to address all disputed medical issues in time to meet the initial 45-day deadline. If the evaluation is not completed on the scheduled date through no

fault of the QME, the QME may request an extension not to exceed an additional 45 days from the Medical Director. The evaluator shall notify the employee and the claims administrator or, if none, the employer not later than 5 days before the initial 45-day period expires that an extension is warranted. A copy of the notice shall be sent to the Medical Director. The notice shall be on the form in Section 112. If the extension of time requires additional days greater than 90 days from the date of the evaluation for the submission of the report, approval or denial shall be granted within 10 days by the Medical Director.

(c) For injuries on or after January 1, 1994, the time frame for initial comprehensive medical-legal evaluations to be prepared and submitted shall not exceed 30 days after the QME or AME has seen the employee or otherwise commenced the comprehensive medical-legal evaluation procedure. Extension of the 30-day limit shall be approved when the evaluator has good cause or not received test results or consulting physicians' evaluations necessary to address all disputed medical issues in time to meet the initial 30-day deadline. If the evaluation is not completed on the scheduled date through no fault of the QME, the QME may request an extension not to exceed an additional 30 days from the Medical Director. The evaluator shall notify the employee and the claims administrator, or if none, the employer not later than 5 days before the initial 30-day period expires that an extension is warranted. A copy of the notice shall be sent to the Medical Director. The notice shall be on the form in Section 112. If the extension of time requires additional days greater than 60 days from the date of the evaluation for the submission of the report, approval or denial shall be granted within 10 days by the Medical Director.

(d) Regardless of the date of injury, an unrepresented employee shall be entitled to a new three-member QME panel if any of the following occur:

- (1) the QME fails to request an extension
- (2) the timeframe extension filed by the QME is denied
- (3) the QME does not issue the report by the approved extension date.

An employee shall have 15 days from the date of time extension granted by the Medical Director to complete, sign and return IMC Forms 113, 115, 116 as applicable. If the employee requests a new panel, the claims administrator or, if none, the employer shall have no liability for the late report. If the Medical Director denies an extension to an AME, any party may withdraw from the AME. The remaining parties to the AME shall be liable for payment to the AME.

~~(d)~~ (e) Extensions for good cause shall not exceed an additional 15 days from the date the report is to be served. Good cause means:

- (1) Medical emergencies of the evaluator or the evaluator's family;
- (2) Death in the evaluator's family;
- (3) Natural disasters or other community ~~catastrophies~~ catastrophes that interrupt the operation of the evaluator's office operations;

~~(e)~~ (f) Extensions shall not be granted because relevant medical information/records (including Disability Evaluation Form 101 (8 CCR §10161(b)) have not been received. The evaluator shall complete the report based on the information available and state that the opinions and/or conclusions may or may not change after review of the relevant medical information/records.

(g) The time frame for supplemental reports in unrepresented cases shall be no more than 60 days from the date of a written or electronically transmitted request to the physician by a party. ~~The A~~ request for a supplemental report shall be accompanied by any new medical records unavailable to the QME at the time of the original QME evaluation in compliance with section 10160(f) of this Title. If a QME fails to complete a requested supplemental report within 60 days, the unrepresented employee shall be entitled to request within 15 days of the expiration of the 60 day period a replacement panel of QMEs. An extension of the 60 days may be agreed to by the parties.

(g) (h) Evaluators giving notice of time extensions will be monitored and advised by the Medical Director when such notices appear unreasonable or excessive. Failure to comply with this section may constitute grounds for denial of the QME's request for reappointment pursuant to Section 51.

Authority cited: Sections 139.2, 4061, 4062, Labor Code.

Reference: Sections 139.2, 4061, 4062, 4067.5, Labor Code.

Section 39. ~~Records~~, Destruction of Records.

The Medical Director may destroy any forms ~~included in these regulations~~ five years after the date of receipt; ~~provided that the~~ All completed "Application for Appointment as Qualified Medical Evaluator" form shall be preserved for each QME during the ~~period(s)~~ duration of ~~his or her~~ the physician's appointment as a QME. The "Request for Qualified Medical Evaluator" forms may be destroyed by the Medical Director two years after the date of receipt.

Authority cited: Sections 139, 139.2, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, Labor Code;
Section 14755, Government Code.

Section 39.5. ~~Records~~, Retention by of Reports and Records by QMEs.

(a) All QMEs shall retain all comprehensive medical-legal reports completed by the QME for a ~~period of five years from~~ after the date of the employee's evaluation report. A QME may retain the comprehensive medical-legal reports in an electronic format if the document contains a digital signature as defined in Government Code section 16.5. Upon written request, a QME is required to return to the party who supplied any original radiological ~~and~~, imaging studies ~~and/or~~ original medical records.

(b) An evaluator shall submit all comprehensive medical/legal reports performed as a QME under this article to the Medical Director upon request for a review by the Medical Director. Failure to submit evaluations upon request by the Medical Director may constitute grounds for disciplinary action pursuant to Section 60.

Authority cited: Sections 139, 139.2, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, Labor Code;
Section 14755, Government Code.

ARTICLE 4 Evaluation Procedures

Section 40. Disclosure Requirements: Unrepresented ~~Worker~~ Employees.

(a) A QME shall advise an unrepresented ~~injured worker~~ employee prior to or at the time of the actual evaluation of the following:

(1) ~~That he or she~~ The employee is entitled to ask the QME and the QME shall promptly answer questions about any matter concerning the evaluation process in which the QME and the ~~injured worker~~ employee are involved;

(2) That subject to Section 41(e), the ~~injured worker~~ employee may discontinue the evaluation based on good cause. Good cause includes discriminatory conduct by the evaluator towards the ~~worker~~ employee based on race, sex, national origin, religion, or sexual preference, and instances where the evaluator requests the ~~worker~~ employee to submit to an unnecessary exam or procedure.

(b) When required as a condition of probation by the Council or his/her licensing authority, the QME shall disclose his/her probationary status. The QME shall be entitled to explain any circumstances surrounding the probation. If at that time, the ~~injured worker~~ employee declines to proceed with the evaluation, such termination shall be considered by the Council to have occurred for good cause.

(c) If the ~~injured worker~~ employee declines to ask any questions relating to the evaluation procedure as set forth in Section 40 (a), and does not otherwise object on the grounds of good cause to the exam proceedings under Section 41(a) during the exam itself, the ~~injured worker~~ employee shall have no right to object to the QME comprehensive medical-legal evaluation based on a violation of this section.

Authority cited: Sections 139.2 and 5307.3, Labor Code

Reference: Sections 139, 139.2, 4060, 4061 and 4062, Labor Code

Section 41. Ethical Requirements.

(a) All QMEs, regardless of whether the ~~injured worker~~ employee is represented by an attorney, shall:

(1) Maintain a ~~clean, professional medical~~ an identifiable physician's office (as defined in Section 1 (m y)) at all times ~~including which shall include~~ functioning evaluating medical instruments and equipment appropriate to conducting the evaluation within the physician's scope of practice.

(2) Schedule all appointments for comprehensive medical-legal evaluations without regard to whether ~~an worker~~ employee is unrepresented or represented by an attorney. A QME shall not refuse to schedule an appointment with an ~~injured worker~~ employee solely because the ~~worker~~ employee is not represented by an attorney or because a promise to reimburse or reimbursement is not made prior to the evaluation.

(3) Not request the employee to submit to an unnecessary exam or procedure.

(b) QMEs selected by an unrepresented ~~injured worker~~ employee from a three-member panel provided by the Council shall not engage in ex parte communication in violation of Labor Code Section 4062.2 and section 35 of these regulations.

(c) All QMEs, regardless of whether the ~~injured worker~~ employee is represented by an attorney, shall with respect to his or her comprehensive medical-legal evaluation:

(1) Refuse any compensation from any source contingent upon writing an opinion that in any way could be construed as unfavorable to a party to the case.

(2) Review all available relevant medical and non-medical records and/or facts necessary for an accurate and objective assessment of the ~~injured worker~~ employees' case before generating a written report.

(3) Render expert opinions or conclusions without regard to an ~~injured worker~~ employee's race, sex, national origin, religion or sexual preference. All discussions of the medical issues and medical research and conclusions shall be composed by the QME. Previously used language created by a third party or generic language not written by the QME is prohibited.

(4) Render expert opinions or conclusions only on issues with regard to which the QME has adequate qualifications, education, and training. All conclusions shall be based on the facts and on the QME's training and specialty-based knowledge and shall be without bias either for or against the ~~injured worker~~ employee or the employer.

(5) Present a report that addresses all relevant issues, is ratable by the DEU, if applicable, and complies with all relevant guidelines of the Industrial Medical Council.

(6) Subject to the provisions of section 11(d), not treat or solicit to provide medical treatment to an employee.

(d) All aspects of all physical and/or psychological comprehensive medical-legal evaluations, including history taking, shall be directly related to medical issues as presented by any party or addressed in the reports of treating physician(s). No QME shall engage in inappropriate physical contact not related to the examination or make inappropriate or offensive comments not related to the exam.

(e) No physician certified by the IMC as a QME, or his or her agent, shall contact a QME for the purpose of influencing that QME's opinions or conclusions in any QME evaluation.

(f) No QME shall schedule appointments to the extent that any ~~injured worker~~ employee will be required to wait for more than one hour at a QME's office prior to being seen for the previously agreed upon appointment time for an evaluation. If the ~~injured worker~~ employee is unrepresented and is not seen by the QME within one hour, ~~he or she~~ the employee may terminate the exam and request a replacement evaluator from the Council. No party shall be liable for the terminated exam. The QME may explain any reasons for the delay to the ~~injured worker~~ employee and, provided both parties agree, the evaluation may proceed or be rescheduled at a later date. If the evaluation is rescheduled, the QME shall provide notice to the claims administrator or, if none, the employer within 5 working days after rescheduling the appointment.

(g) If the ~~injured worker~~ employee terminates the examination process based on an alleged violation of either Section 40 or Section 41(a) and the Appeals Board later determines that good cause did not exist for the termination, the cost of the evaluation shall be deducted from the ~~injured worker~~ employee's award. A violation of Sections 35(f), 40, ~~or of any part of section 41(a)~~ shall constitute good cause for purposes of an Appeals Board determination. No party shall be liable for any cost for medical reports or medical services delivered as a result of an exam terminated for good cause.

(h) Nothing in this section shall require a QME to undertake or continue a comprehensive medical-legal evaluation where the ~~injured worker~~ employee or his/her representative uses abusive language towards the QME or the QME's staff or deliberately attempts to disrupt the operation of the QME's office in any way. The QME shall state under penalty of perjury, the facts of the termination of the evaluation process. Upon request, the Medical Director shall investigate the facts and make a final determination of the issue(s).

(i) Nothing in this section shall require a QME to undertake or continue a comprehensive medical-legal evaluation where the ~~injured worker~~ employee is intoxicated or under the influence of any medication which impairs the ~~injured worker~~ employee's ability to participate in the evaluation process. The QME shall state under penalty of perjury, the facts supporting the termination of the evaluation process. Upon request, the Medical Director shall investigate the facts and make a final determination of the issue(s).

Authority cited: Sections 139.2, 5307.3 and 5307.6, Labor Code
Reference: Sections 139, 139.2, 4060, 4061, 4062 and 4062.2, Labor Code

ARTICLE 4.5

Minimum Time Guidelines

Section 49. Definitions.

The following definitions apply to this Article:

(a) "Cardiovascular evaluation" means the determination of disability due to pathological changes of the heart and/or the central circulatory system.

(b) "Face to face time" means only that time the evaluator is present with an ~~injured worker~~ employee. This includes the time in which the evaluator performs such tasks as taking a history, performing a physical examination or discussing the ~~worker~~ employee's medical condition with the ~~worker~~ employee. Face to face time excludes time spent by the evaluator on research, records review and report writing. ~~Any~~ Time spent by the ~~injured worker~~ employee with clinical or clerical staff in performing diagnostic or laboratory tests (such as blood tests or x rays), or time spent ~~by the injured worker~~ in a waiting room, or other area outside the evaluation room, is not included in face to face time.

(c) "Medical evaluation" means comprehensive medical-legal evaluation as defined under section 9793 of Article 5.6, Subchapter 1, Chapter 4.5 of this Title.

(d) "Neuromusculoskeletal evaluation" means the determination of disability due to injury to the central nervous systems, the spine and extremities, and the various muscle groups of the body.

(e) "Psychiatric evaluation" means the determination, by either a psychiatrist or psychologist following the IMC guidelines on psychiatric protocols, of disability due to psychopathology.

(f) "Pulmonary evaluation" means the determination of disability due to pathological changes of the lungs and/or other components of the respiratory system.

~~(g) QME. "QME" means Qualified Medical Evaluator appointed by the Council pursuant to Labor Code section 139.2.~~

(h) (g) "Uncomplicated evaluation" means a face to face evaluation in which all of the following are recorded in the medical report: Minimal or no review of records, minimal or no diagnostic studies, or laboratory testing, minimal or no research, and minimal or no medical history taking.

Authority cited: Section 139, Labor Code.
Reference: Sections 139, 139.2, 4628, Labor Code.

Section 49.2 Neuromusculoskeletal Evaluation.

A medical evaluation concerning a claim for neuromusculoskeletal injury, including an injury to the foot and ankle, (whether specific or cumulative in nature) shall not be completed by ~~a QME~~ an evaluator in ~~fewer~~ less than 20 minutes of face to face time. Twenty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report that he or she has complied with these guidelines and explain in detail any variance.

Authority cited: Sections 139 and 139.2 (j), Labor Code.
Reference: Sections 139, 139.2, 4628, Labor Code.

Section 49.4. Cardiovascular evaluation.

A medical evaluation concerning a claim for cardiovascular injury (whether specific or cumulative in nature) shall not be completed by ~~a QME~~ an evaluator in ~~fewer~~ less than 30 minutes of face to face time. Thirty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report that he or she has complied with these guidelines and explain in detail any variance.

Authority cited: Sections 139 and 139.2 (j), Labor Code
Reference: Sections 139, 139.2, 4628 Labor Code.

Section 49.6. Pulmonary evaluation.

A medical evaluation concerning a claim for pulmonary injury (whether specific or cumulative in nature) shall not be completed by ~~a QME~~ an evaluator in ~~fewer~~ less than 30 minutes of face to face time. Thirty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report that he or she has complied with these guidelines and explain in detail any variance.

Authority cited: Sections 139 and 139.2 (j), Labor Code.
Reference: Sections 139, 139.2, 4628, Labor Code.

Section 49.8. Psychiatric evaluation.

A medical evaluation concerning a claim for psychiatric injury (whether specific or cumulative in nature) shall not be completed by ~~a QME~~ an evaluator in less than one hour of face to face time. One hour is considered the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report that he or she has complied with these guidelines and explain in detail any variance.

Authority cited: Sections 139 and 139.2 (j), Labor Code

Reference: Sections 139, 139.2, 4628, Labor Code.

Section 49.9. Other evaluation.

A medical evaluation concerning a claim for any injury (whether specific or cumulative in nature) not specifically included in this article shall not be completed by ~~a QME~~ an evaluator in ~~fewer~~ less than 30 minutes of face to face time. Thirty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report that he or she has complied with these guidelines and explain in detail any variance.

Authority cited: Sections 139 and 139.2 (j), Labor Code

Reference: Sections 139, 139.2, 4628, Labor Code.

ARTICLE 5 QME Reappointment

Section 50. Reappointment: Requirements and Application Form.

(a) In addition to the eligibility requirements set forth in section 11, a physician may seek reappointment on the basis that he or she was an active QME on June 30, 2000. For all physicians, applications for reappointment shall include a Reappointment Application Form in [Section 10.1A](#) and the appropriate fee under [Section 17](#) and shall be filed at the Council's headquarters office.

(b) Any Reappointment Application Form may be rejected if it is incompletely filled out or does not contain the required supporting documentation listed in [Section 11](#). Upon its approval of the Reappointment Application Form, the Council shall verify that the QME has complied with all requirements under this Article.

(c) When a QME applies for reappointment, he or she shall submit a statement signed under penalty of perjury (1) that he or she has completed the education requirement and (2) that lists the dates, locations, and titles of continuing education programs and the names of the providers of those programs which he or she has taken to meet the requirement of Labor Code Section 139.2(d)(3), as well as the number of hours of attendance at each program. The Council may randomly audit QMEs for documentation of program attendance, which supports compliance with this requirement.

(d) The reappointment application form shall ask if the applicant has been convicted of any criminal charge, and if the applicant is currently under charge for any crime, and if so, for the applicant to give all particulars.

(e) The reappointment application form shall ask how many comprehensive medical-legal evaluation reports, (except in the capacity of treating physician) the applicant has prepared as a QME during the period of the applicant's appointment (or, for the period beginning with January 1, 2004, for reappointments which commence before January 1, 2006.)

(f) The reappointment application shall require that it be signed under penalty of perjury as to all statements within it, to the best of the knowledge of the applicant.

(g) The reappointment application form shall ask if the applicant is currently the subject of an accusation by the applicant's licensing board, and if so, for the applicant to state all particulars.

Authority cited: Sections 139, 139.2, 4060, 4061 and 4062, Labor Code.
Reference: Sections 139, 139.2, 4060, 4061, 4061.5 and 4062, Labor Code

Section 52. Reappointment: Unavailability Notification.

All QMEs shall comply with the unavailability notification requirements in Section 33 as a condition for reappointment. The Council, after hearing pursuant to Section 61, may deny reappointment of any QME who has filed notification for unavailability under Section 33 for more than 90 calendar days during the ~~calendar year~~, QME's fee period, as defined in Section 18 of these regulations.

Authority cited: Section 139.2, Labor Code.
Reference: Sections 139.2(d), 139.2(j)(6), Labor Code.

Section 58. Reappointment: No longer qualified for initial appointment

The Council, after hearing pursuant to Section 61, may deny reappointment to any QME who would not, if application were made for initial appointment, (except for statutory conditions for appointment enacted subsequent to the initial appointment) be qualified for initial appointment.

Authority cited: Section 139.2, Labor Code.
Reference: Sections 139.2(b) Labor Code.

**ARTICLE 6
QME Discipline**

Section 60. Discipline.

(a) The Council may, in its discretion, suspend or terminate any ~~physician from the QME list~~ without hearing:

- (1) whose license has been revoked;
- (2) whose license has been suspended or terminated by the relevant licensing board so as to preclude practice;
- (3) who has been convicted of a misdemeanor or felony related to the conduct of his or her practice or who has been suspended or placed on probation by his or her licensing board;
- (4) based on a stipulation or a decision by the physician's licensing board that the physician has been placed on probation;
- (5) who has failed to pay timely the appropriate fee as required under section 17.

(b) The suspension, expiration or forfeiture by operation of law of a QME certification or its surrender without written consent of the Council shall not, during any period in which it may be renewed, restored, reissued or reinstated deprive the Council of its authority to institute or continue a disciplinary proceeding against the QME upon any ground provided by law or to enter an order suspending, or revoking the QMEs certification or otherwise imposing sanction authorized pursuant to section 65.

~~(b)~~ (c) The council may, based on ~~an~~ complaint accusation by the Medical Director, and following a hearing pursuant to Section 61, suspend, terminate or place on probation a QME found in violation of a statutory or administrative duty as described in the IMC Sanction Guidelines under Section 65 of these regulations. Such violations include, but are not limited to:

- (1) one violation of Labor Code Section 139.3 or 4628;
- (2) failure to follow the medical procedures established by the Council pursuant to Labor Code Section 139.2(j)(1)(2)(3)(4)(5) or (6);
- (3) failure to comply with the requirements of Labor Code Section 139.2(b) or (c) and/or Section 10, 10.1, 10.5, 11 or 12 of these regulations;
- (4) failure to comply with the unavailability notification requirements pursuant to Section 33.
- (5) failure to comply with the disclosure and ethical requirements pursuant to Sections 40 and 41;
- (6) failure to complete accurate and complete reports pursuant to Labor Code Section 139.2(i) or to comply with section 39.5 of these regulations.
- (7) ~~A finding by the Appeals Board of ex parte contact~~ communication by the QME prohibited by Labor Code Section 4062.2 ~~and or~~ Section 35 of these Regulations.
- (8) a finding by the Council that the QME solicited an to take over that ~~worker~~ employee's treatment for his or her workers compensation claim.
- (9) providing false information in any form or supporting documentation filed with the Council.
- (10) the failure to comply with an order of the Workers' Compensation Appeals Board, pursuant to section 56.
- (11) a violation of Business and Professions Code Section 730.

~~(e)~~ (d) The Medical Director may ~~file a complaint with the Council against a QME~~ file an accusation on any of the grounds listed in subsection (b) based on a complaint from a member of the public ~~and/or~~ on the Medical Director's own initiative. The Medical Director may assign legal counsel and investigators to conduct all matters related to this Article.

~~(d)~~ (e) A report prepared by a QME which has not been completed and served on one or more parties prior to the date of the final decision taken by the licensing board or the date of the conviction, whichever is earlier, shall be inadmissible before the Appeals Board and no party shall have liability for payment for the report.

Authority cited: Sections 139, 139.2, Labor Code.
Reference: Section 139.2 Labor Code.

Section 61. Hearing Procedure.

(a) Where the Medical Director determines that there is a prima facie evidence of any violation of Section 60, the Medical Director ~~he or she~~ shall make and submit a prima facie case of the violation to a committee within the Council assigned to review disciplinary matters.

(b) If the committee sustains the Medical Director's prima facie case, the QME shall be notified in writing of the determination and shall also be notified of his or her right to a hearing in accordance with Chapter 4 (commencing with Section 11370) and Chapter 5 (commencing with Section 11500) and Part 1 of Division 3 of the Government Code.

(1) The committee may, notwithstanding Government Code Section 11502, assign the hearing matter to a hearing officer designated by the Medical Director who shall act as an Administrative Law Judge for the purposes of Government Code Sections 11370 et. seq. and 11500 et. seq., or may delegate in whole or in part to an Administrative Law Judge the authority to conduct the hearing and decide the case. In the event of a hearing, the hearing officer or Administrative Law Judge shall fix the time and place of the hearing and notify interested parties in writing no fewer than 10 days in advance of the hearing and in accordance with Code or Civil Procedure Sections 1013(a) and 2015.5 specifying the time and place of the hearing.

(2) If an Administrative Law Judge conducts a hearing, the Administrative Law Judge selected to preside over the hearing shall hear the case alone, and exercise all powers related to the conduct of the hearing.

(3) ~~Upon a decision being made regarding the prima facie case, t~~The Administrative Law Judge or hearing officer shall file a written statement of findings and decisions with the full Council. The findings and decision made pursuant to this action shall include specific findings in accordance with Section 60(b), and under Section 65 of these Regulations shall recommend, but defer to the Council the final decision, with respect to sanctions. The Council shall, at the next scheduled Council meeting, accept, alter, or not adopt the proposed decision.

(4) The Council's decision on which sanction (s) to impose on a QME, pursuant to Labor Code Section 139.2(k) or any other statute giving the Council disciplinary authority, shall be in accordance with the IMC Sanction Guidelines under Section 65 of this Title.

(5) In accordance with Government Code Section 11517(c), if the proposed decision is not adopted by the Council, the Council shall determine in accordance with Labor Code Section 139(g) whether or not to decide the case as a body, based on the record and transcript, and/or whether or not to take additional evidence or to refer the case back to the Administrative Law Judge to take additional evidence on any issue or issues requested by the Council.

(6) Within 30 days of the date the written decision is served upon the QME, the QME may file a petition for reconsideration with the Council. The petition shall be governed by Government Code Section 11521 and shall set forth any legal or factual basis as to why the decision should not be confirmed. The Council Chairperson(s) shall appoint a three member panel, (excluding members of the committee) to review the physician's petition.

(c) Judicial Review of the Council's decision may be had by the filing of a petition for writ of mandate pursuant to Government Code Section 11523 no later than 30 days after the last day on which the Council can order reconsideration in accordance with (b)(6) of this Section.

Authority cited: Sections 133, 139, 139.2, 5307.3 and 5307.4, Labor Code;
and Sections 11370 et seq. and 11500 et seq., Government Code.
Reference: Section 139.2, Labor Code; and Sections 11502 et seq., Government Code.

Section 62. Probation.

(a) A physician on probationary status from his or her licensing authority may be placed on probationary status by the Council in its discretion in accordance with IMC Sanction Guidelines under Section 65 of this Title.

(b) A QME on probationary status from the Council may be required to report periodically to the Medical Director to ensure compliance with any conditions of probation that have been imposed by the Council. These conditions may include the completion of specific courses and training.

(c) A QME shall be deemed to have passed probation and be eligible for reappointment if ~~he or she~~ has the physician has complied with the conditions imposed by the Council during the probation period, and meets the requirements for reappointment in accordance with section Article 5.

(d) A QME shall be deemed to have failed probation if upon completion of the probation period it is determined that ~~he or she has~~ the physician has not complied with the conditions imposed by the Council during the probation period, and/or has failed to meet the requirements for reappointment in accordance with Article 5.

(e) The Council shall terminate probation, which shall be equivalent to a failure to pass probation, before completion of the probation period if during the probation period it is determined that a QME has not complied with the conditions of probation.

Authority cited: Sections 139 and 139.2, Labor Code
Reference: Section 139.2, 4060, 4061 and 4062, Labor Code

Section 63. Statement of Issues.

The Council shall notify in writing an applicant denied appointment or reappointment as a QME or certification as a continuing education provider under sections 11.5 or 55 of these regulations and shall do either of the following:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code;

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) notice that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if a written request for a hearing is made within 60 days after service of the denial. Unless written request for hearing is made within the 60 day period, the applicant's right to a hearing is deemed waived.

(c) Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the Council in an application or otherwise. Service by mail is complete on the date of mailing.

ARTICLE 15

Fraudulent or Misleading Advertising

Section 156. Council Requests to Review Advertising Copy.

(a) Upon receipt of a complaint under Section 155 of these regulations, the Council shall serve a written notice of complaint on the physician against whom the complaint was filed. Such notice shall direct the physician to file a copy of his or her advertising with the Medical Director within 15 working days of the date on which the notice was served.

(b) The Medical Director may take such steps as he or she deems necessary to determine whether the complaint has merit.

(1) The Medical Director shall respond to the complaint within 15 working days of the Council's receipt of the physician's response and notify the complainant that the Council:

(A) will investigate the complaint; or

(B) will require additional time to ascertain whether the complaint has merit; or

(C) will refer a copy of the complaint to another agency which also has jurisdiction over the subject matter of the complaint; or

(D) will take no further action on the complaint because the Council lacks jurisdiction over the person or conduct complained of; or

(E) will take no further action on the complaint because the allegations of the complaint do not warrant further action by the council for the reasons stated in the response.

(c) At the time of filing the advertising copy with the Medical Director, the physician shall also file an answer to the complaint, briefly setting forth the grounds on which the physician believes the copy to be in compliance with Business and Professions Code Section 651, and the provisions of these regulations. Nothing contained in the answer shall preclude the right of the physician to present further or different grounds of defense before the Council or appropriate licensing board. Upon reviewing the physician's answer, the Medical Director may dismiss or informally resolve the complaint where he or she deems such action appropriate.

(d) The ~~Council~~ Medical Director may, without receipt of a complaint, request a physician to provide a copy of any advertising used by that physician for review. Such a request shall be made in writing, and shall be personally served on the physician.

(e) If a physician who has been appointed as a QME fails to deliver a copy of the advertising used to the ~~Council~~ Medical Director within 15 working days of receipt of the notice, the ~~Council~~ Medical Director may infer from the failure to comply that the advertising material used by the QME is in violation of Business and Professions Code Section 651, or these regulations. The maximum penalty that the Council

may impose for a finding of violation based solely on the negative inference created by this provision shall be suspension of the physician's appointment as a Qualified Medical Evaluator for a period of six months followed by a period of probation not to exceed one year.

(f) If a non-QME physician fails to deliver a copy of the advertising used to the Council Medical Director within 15 working days of receipt of the request, the Council Medical Director shall refer the matter to that physician's licensing board for such proceedings as that board may deem proper.

Authority cited: Sections 139, 139.4 and 139.45, Labor Code.

Reference: Sections 139, 139.4 and 139.45, Labor Code.

Section 157. Determinations.

(a) If, after reviewing the physician's advertising copy and the physician's answer to the complaint, the Medical Director determines that the advertising copy violates Business and Professions Code Section 651, or these regulations, ~~he or she~~ the Medical Director shall submit a preliminary prima facie determination to Council's Disciplinary Committee.

~~(b) If the Council Disciplinary Committee sustains the Medical Director's preliminary prima facie determination, and the physician subject to the complaint is not a QME, the Medical Director shall forward a copy of the preliminary determination, the complaint, and all supporting documentation to the appropriate physician's licensing board for such proceedings as that board may deem proper.~~

~~(c) If the Council Disciplinary Committee sustains the Medical Director's preliminary prima facie determination, and the physician subject to the complaint is a QME, the Council shall hold a hearing on the complaint in accordance with Chapter 4 (commencing with Sections 11370) of Part 1 of Division 3 of the Government Code.~~

~~(1) The Council may delegate in whole or in part to the Administrative Law Judge the authority to conduct the hearing and decide upon the complaint.~~

~~(2) Upon a decision being made regarding the complaint, the Administrative Law Judge, acting alone, or as advisor to the Council, shall file a copy of the written statement of findings and decision with the Council.~~

~~(d) Within 30 days of the date the written decision is served upon the QME, the QME may file a written notice of appeal with the Council requesting reconsideration by the Council of the Administrative Law Judge's decision. Upon receipt of the notice of appeal, the Chairperson of the Council shall appoint 3 Council members to serve as an appellate panel to hear and recommend to the Council, a decision on the appeal.~~

~~(1) The appeal panel shall review the entire record and may hold a hearing thereon.~~

~~(2) In the event of a hearing, the designated chair of the appeal panel shall fix the time and place of the hearing and notify the parties to the appeal in writing not less than 15 working days in advance of the hearing in accordance with Code of Civil Procedure Sections 1013a and 2015.5.~~

~~(3) The hearing on the appeal shall be limited to a review of the record before the Administrative Law Judge and such written and/or oral argument as the parties may submit.~~

~~(4) Upon reaching a decision on the appeal, the appeal panel shall submit to the Council a copy of the record and a written report summarizing the evidence, findings of fact, and a recommended decision. The Council shall take appropriate action on the recommended decision. If, for any reason, the Council rejects the appeal panel's decision, a complete copy of the record shall be furnished to each member of the Council for independent review before any action is taken by the Council in rendering a decision.~~

~~(5) The Council shall notify the complainant and the parties to the appeal of its decision in writing in accordance with Code of Civil Procedure Sections 1013a and 2015.5.~~

~~(6) The Medical Director shall promptly forward a copy of the Council's final decision to the appropriate physician's licensing board for such proceedings as that board may deem proper.~~

(b) If the committee sustains the Medical Director's prima facie case, the QME shall be notified in writing of the determination and shall also be notified of their right to a hearing in accordance with Chapter 4 (commencing with Section 11370) and Chapter 5 (commencing with Section 11500) and Part 1 of Division 3 of the Government Code.

(1) The committee may, notwithstanding Government Code Section 11502, assign the hearing matter to a hearing officer designated by the Medical Director who shall act as an Administrative Law Judge for the purposes of Government Code Sections 11370 et. seq. and 11500 et. seq., or may delegate in whole or in part to an Administrative Law Judge the authority to conduct the hearing and decide the case. In the event of a hearing, the hearing officer or Administrative Law Judge shall fix the time and place of the hearing and notify interested parties in writing no fewer than 10 days in advance of the hearing and in accordance with Code of Civil Procedure Sections 1013(a) and 2015.5 specifying the time and place of the hearing.

(2) If an Administrative Law Judge conducts a hearing, the Administrative Law Judge selected to preside over the hearing shall hear the case alone, and exercise all powers related to the conduct of the hearing.

(3) Upon a decision being made regarding the prima facie case, the Administrative Law Judge or hearing officer shall file a written statement of findings and decisions with the full Council. The decision made pursuant to this action shall include specific findings in accordance with Section 60(b), and under Section 65 of these Regulations shall recommend, but defer to the Council the final decision, with respect to sanctions. The Council shall, at the next scheduled Council meeting, accept, alter, or not adopt the proposed decision.

(4) The Council's decision on which sanction(s) to impose on a QME, pursuant to Labor Code Section 139.2(k) or any other statute giving the Council disciplinary authority, shall be in accordance with the IMC Sanction Guidelines under Section 65 of this Title.

(5) In accordance with Government Code Section 11517(c), if the proposed decision is not adopted by the Council, the Council shall determine in accordance with Labor Code Section 139(g) whether or not to decide the case as a body, based on the record and transcript, and/or whether or not to take

additional evidence or to refer the case back to the Administrative Law Judge to take additional evidence on any issue or issues requested by the Council.

(6) Within 30 days of the date the written decision is served upon the QME, the QME may file a petition for reconsideration with the Council. The petition shall be governed by Government Code Section 11521 and shall set forth any legal or factual basis as to why the decision should not be confirmed. The Council Chairperson(s) shall appoint a three member panel, (excluding members of the committee) to review the physician's petition.

(c) Judicial Review of the Council's decision may be had by the filing of a petition for writ of mandate pursuant to Government Code Section 11523 no later than 30 days after the last day on which the Council can order reconsideration in accordance with (b)(6) of this Section.

(d) The Medical Director shall promptly forward a copy of the Council's final decision to the appropriate physician's licensing board for such proceedings as that board may deem proper.

Authority cited: Sections 139, 139.4 and 139.45, Labor Code.

Reference: Sections 139, 139.4 and 139.45 Labor Code.

Section 158. Penalties.

(a) A QME who is found by the Council to have violated any provision of Business and Professions Code Section 651, or these regulations may have ~~his or her~~ **their** QME status terminated, suspended, or placed on probation by the Council. Any probation imposed may have such conditions as the Council deems reasonable, including but not limited to the publication of corrective advertising and the submission of future advertising copy for the Council's approval before its use.

(b) The Council shall consider the following factors in determining the appropriate penalty for a violation of Business and Professions Code Section 651, or these regulations:

- (1) The seriousness or materiality of the misrepresentation;
- (2) whether the physician cooperated with the investigation;
- (3) whether the violation was single event, or appeared to be part of a pattern sufficient to demonstrate a business practice;
- (4) whether the violator has a record of prior discipline by the Council, Medical Board, or other appropriate licensing board or authority;
- (5) whether the violator has a record of contempt reprimands or adjudications issued by the Workers' Compensation Appeals Board.

Authority cited: Sections 139, 139.4 and 139.45, Labor Code.

Reference: Sections 139, 139.4 and 139.45, Labor Code.